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SIPDIS

SENSITIVE

STATE FOR EAP/BCLTV, AND EB/TRA
TRANSPORTATION FOR MARITIME ADMINISTRATION

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TAGS: EWWT EINV PREL VM
SUBJECT: Vietnam: March 22-44 Consultations on Maritime Cooperation

Sensitive but unclassified protect accordingly.

¶1. (SBU) Summary: The U.S. Maritime Administration (MARAD) and the Ministry of Transportation (MOTr) met March 22-24 in Hanoi to discuss the potential for conclusion of a bilateral maritime services agreement in the near future. The Vietnamese side provided a draft agreement, which served as the basis for discussion on issues a future bilateral agreement should cover. The U.S. delegation highlighted the need for a "forward looking" agreement that would enable U.S. investors to provide a full range of maritime services in Vietnam and expand options for investment with up to 100 percent foreign equity in the maritime sector. At the conclusion of the discussions, the U.S. delegation committed to revise the Vietnamese draft agreement to reflect the issues discussed and to present a new draft to the GVN as soon as possible. The Vice Minister of Transportation reiterated the GVN's interest in concluding a bilateral agreement in time for a proposed trip to Washington by the Prime Minister in June this year. End Summary.

Productive Talks

¶2. (U) A delegation of Transportation Department (DOT) officials, headed by the Maritime Administration's Associate Administrator for Policy and International Trade, Bruce J. Carlton, met with GVN transport officials March 22-24 in Hanoi to discuss the possibility of negotiating a bilateral maritime services agreement. Mr. Nguyen Cong Duc, Vice Chairman of the Vietnam National Maritime Administration (Vinamarine), led the Vietnamese delegation, which also included representatives of the MOTr, Vietnam National Shipping Lines (Vinalines) and the Ministry of Foreign Affairs.

¶3. (SBU) The discussions were friendly and productive. After both sides briefly described the state of maritime services in their respective countries, they highlighted high-level interest in the possibility of concluding a maritime agreement. The U.S. side emphasized interest in long-term development of maritime relations, including establishing a framework in which U.S. shipping companies could provide a full range of maritime services in Vietnam in areas such as multi-modal and logistics operations. The Vietnamese side agreed that a bilateral agreement should be forward looking and should foster investment in both countries.

Legal Framework

¶4. (U) According to the GVN delegation, the two primary pieces of legislation that control activities in the maritime sector in Vietnam are the 1990 Maritime Code of Vietnam, which provides a broad framework for maritime activities and the 1996 Law on Foreign Investment (amended in 2000). The GVN is in the process of thoroughly revising both of these laws. The National Assembly is scheduled to approve the revisions to the Maritime Code in May and to the Foreign Investment Law in November. In addition, a 2001 Government Decree (No. 10/2001/NĐ-CP) provides detailed regulations on limitations on investment in the maritime services sector. According to this decree, foreign investors are limited to 49 percent equity investment in joint ventures in a range of maritime services. Foreign investment is prohibited in two services: sea ship agencies and sea towage services.

¶5. (SBU) MARAD Associate Administrator Carlton said that while Vietnam's current regulations limit foreign investment to 49 percent, the two sides need to look at ways to move toward 100 percent foreign equity in the maritime sector "relatively quickly." This will bring investment in to Vietnam's market and help grow its economy. Vinamarine Vice Chairman Duc responded that he is thinking along the same lines as the U.S. side. It is critical for Vietnam to change its laws at this time, he added. The National Assembly is involved in a comprehensive law-making process as part of Vietnam's WTO accession process. It is our

"policy and intent to open the market and generate a better environment for foreign investment," he concluded. Hinting that the two sides should not focus too much attention on the constraints of Vietnam's legal system, and that the GVN could be flexible on the equity cap issue, Mr. Tran Manh Ha, Director of the Legal department of Vinalines added that U.S.-Vietnam discussions on the limitations on foreign investment "don't need to wait for changes in the law. The two sides can have a longer vision."

Key Elements

16. (SBU) Using a draft bilateral agreement provided by the GVN as a framework, the two sides discussed key elements of a potential agreement, including the following:

-- Advance notification of arrival. The USG requires that ships coming to the United States give 96-hour advance notification of arrival. Vietnam requires 72 hours prior notice.

- Seafarers' documentation. The U.S. side noted that any language on seafarers' documents in a bilateral agreement should be in line with international conventions dealing with this issue, including ILO Convention 185 and the International Maritime Organization's International Ship and Port Facility Security (ISPS) Code. (Note: ILO 185 allows use of biometric technology on seafarers' identity documents. End note.) The U.S. side also noted that since September 11, the United States has eliminated the use of crew list visas (for both aviation and maritime services). Appropriate treatment of visa issues and identity documents in maritime agreements is extremely important to the United States.

- Most-favored Nation (MFN) versus national treatment (NT) for shipping services. The U.S. side noted that in Annex H, Article 4.3(b) of the U.S.-Vietnam Bilateral Trade Agreement (BTA), Vietnam had committed to eliminate discriminatory port charges by December 2004. Any discussion of applying MFN rather than NT for port charges would constitute a step back from that agreement. The GVN acknowledged the need for a maritime agreement to comply with BTA principles.

- The relationship between a bilateral maritime agreement and the two parties' other international commitments (such as membership in ASEAN or APEC.)

- Market access and investment. The U.S. side expressed strong interest in ensuring that an agreement would include opportunities for expanded market access and investment opportunities for U.S. shipping companies. The U.S. side noted that a priority goal for the agreement would be to enable U.S. carriers to move from the current 49 percent cap on equity to a majority share (51 percent) and then to 100 percent foreign owned investments within a relatively short time frame.

- Remittance of income. The U.S. side noted that this issue had been dealt with in the U.S. Vietnam Bilateral Air Services Agreement signed in 2003 and suggested a parallel approach should be used for maritime services.

- Cooperation on investigation of maritime casualties in the territorial waters of each country.

- Cooperation on search and rescue activities.

- Education and training for seafarers. Both sides expressed strong support for developing mechanisms for educational and training exchanges.

Courtesy Call on Vice Minister of Transport

17. (SBU) On the last day of the talks the U.S. delegation, accompanied by Econ/C, paid a courtesy call on Vice Minister of Transportation, Tran Doan Tho. At this meeting, VM Tho noted the GVN is "vigorously preparing" for a visit by Prime Minister Phan Van Khan to the U.S. this summer and expressed hope that a bilateral maritime agreement could be included in time for such a visit. MARAD Associate Administrator Carlton responded that the discussions in Hanoi have resulted in a very comprehensive roadmap for negotiation of a bilateral agreement. He also highlighted the U.S. side's commitment to revise the GVN draft agreement based on the discussions and provide a copy to the MOTr for consideration "very quickly."

Memorandum of Consultations

18. (U) The discussions concluded on March 24 with the signing of a Memorandum of Consultation. Text of the MOC follows:

Memorandum of Consultation

Delegations representing the Governments of the United States of America and of the Socialist Republic of Vietnam held bilateral consultations in Hanoi on March 22 to 24, 2005, to discuss prospects for a bilateral maritime agreement. The U. S. delegation was chaired by Mr. Bruce J. Carlton, Associate Administrator for Policy and International Trade, U.S. Maritime Administration. The Vietnamese delegation was chaired by Mr. Nguyen Cong Duc, Vice Chairman of the Vietnam National Maritime Administration. The discussions proceeded in a friendly and productive atmosphere; delegation lists appear as Attachment 1A.

The discussions focused on the interest of the two countries in fostering a mutually beneficial maritime relationship. The delegations first acquainted each other with their respective governments' perspectives on the state of the international shipping industry, its rapid pace of development, and its potential for supporting the economic growth of both Vietnam and the United States. Discussions then addressed key elements of a bilateral agreement based on the draft prepared by the Vietnamese side, including a comprehensive assessment of the potential scope and form of such an agreement, mechanisms for encouraging investment and opportunities for cooperation. The U.S. side will provide the Vietnamese side a revised draft reflecting these discussions as soon as possible. Lastly, the two sides briefed each other on their government's successful implementation of new global maritime security mandates. With the intention of maintaining the momentum developed from this positive exchange, the delegations agreed to recommend to their respective governments that negotiation of an agreement be given high priority.

For the U.S. delegation:
Bruce J. Carlton

For the Vietnamese delegation:
Nguyen Cong Duc

Hanoi
March 24, 2005

Annex A

List of the U.S. Delegation

Mr. Bruce J. Carleton, Associate Administrator for Policy and International Trade, U.S. Department of Transportation, Maritime Administration

Mr. Gregory B. Hall, Director of International Activities, U.S. Department of Transportation, Maritime Administration

Mr. Brian T. Varney, International Economist, U.S. Department of Transportation, Maritime Administration

Mr. Christopher T. Tourtellot, Attorney, U.S. Department of Transportation

Mr. Samuel R. Watson, Economic Counselor, U.S. Embassy Hanoi

Ms. Jessica L. Adkins, Economic Officer, U.S. Embassy Hanoi

Ms. Vo Lan Phuong, Economic Assistant, U.S. Embassy Hanoi

List of the Vietnamese Delegation

Mr. Nguyen Cong Duc, Vice Chairman, Vietnam National Maritime Administration (Vinamarine)

Mr. Nguyen Vinh Loc, Deputy Director General, International Cooperation Department, Ministry of Transport

Mrs. Pham Thi Phuong, Deputy Director General, Legal Department, Ministry of Transport

Mr. Nguyen Viet Dung, Head of International Cooperation Section, Vietnam National Maritime Administration (Vinamarine)

Mrs. Ho Huong Giang, Americas Department, Ministry of Foreign Affairs

Mr. Nguyen Hoang, Expert, Ministry of Transport

Mr. Tran Viet Ha, expert, International Cooperation Department, Ministry of Transport

Mr. Tran Manh Ha, Director of Legal Department, Vietnam National Shipping Lines (Vinalines)

MARINE